

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

FLEETWOOD INDUSTRIES, INC.;
HERRE BROTHERS, INC.;
HEYCO METALS, INC.;
KIEF INDUSTRIES, INC.;
CHARLES KOENIG WHEEL ALIGNMENT
SERVICE AND GARAGE;
BRIAN R. SCHLAPPICH, INC.;
HUB FABRICATING COMPANY; and
KACHEL MOTORS, INC.

CIVIL ACTION

FILED AUG 17 2000

NO. 00-1818

ORDER

AND NOW, this 16th day of August, 2000, upon consideration of the Motion of The United States of America to Enter (Second) Unchallenged Partial Consent Decree filed August 8, 2000, it is hereby ORDERED that the motion is GRANTED and the Clerk of Court is hereby directed to file the Consent Decree on the docket.

BY THE COURT


Franklin S. Van Antwerpen, U.S.D.J.

ENTERED

8/17/00

CLERK OF COURT AR000178

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLEETWOOD INDUSTRIES, INC.;
HERRE BROTHERS, INC.;
HEYCO METALS, INC.;
KIEF INDUSTRIES, INC.;
CHARLES KOENIG WHEEL ALIGNMENT
SERVICE AND GARAGE;
BRIAN R. SCHLAPPICH, INC.;
HUB FABRICATING COMPANY;
KACHEL MOTORS, INC.,

Defendants.

FILED AUG 17 2000

Civil Action No. 00-CV-1818

CONSENT DECREE

ENTERED

8/17/00

CLERK OF COURT

AR000179

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>GENERAL PROVISIONS</u>	5
1.	<u>Jurisdiction.</u>	5
2.	<u>Retention of Jurisdiction.</u>	5
3.	<u>Integration.</u>	5
4.	<u>Appendices.</u>	6
5.	<u>Public Comment.</u>	6
6.	<u>Effective Date.</u>	6
7.	<u>Signatories.</u>	6
8.	<u>Agreement to Entry of Decree.</u>	7
9.	<u>Agent for Service of Process.</u>	7
10.	<u>Extension of Time to Answer the Amended Complaint.</u>	7
11.	<u>Parties Bound.</u>	7
12.	<u>Objectives of the Parties.</u>	8
13.	<u>Definitions.</u>	8
III.	<u>REIMBURSEMENT OF RESPONSE COSTS</u>	11
14.	<u>Payment by Each Settling Defendant.</u>	11
15.	<u>Nature of Payment.</u>	12
16.	<u>Failure to Make Payment.</u>	13
IV.	<u>COVENANT NOT TO SUE BY UNITED STATES</u>	13
17.	<u>Covenant of the United States.</u>	13
18.	<u>Reservation of Rights by the United States.</u>	14
19.	<u>Re-Opener.</u>	14
V.	<u>COVENANTS AND CERTIFICATIONS BY SETTLING DEFENDANTS</u>	15
20.	<u>Covenant to the United States.</u>	15
21.	<u>No Pre-Authorization of Claim.</u>	16
22.	<u>Covenant as to Other Settling Defendants or Other Persons.</u>	16
23.	<u>Certification by Each Settling Defendant.</u>	17
VI.	<u>EFFECT OF SETTLEMENT</u>	17
24.	<u>Reservations as to Non-Parties</u>	17
25.	<u>Waiver of Defenses.</u>	18
26.	<u>Contribution Protection.</u>	18
APPENDIX A "Berks Landfill Volumetric Ranking Summary Report--25% Premium"		
APPENDIX B "Berks Landfill Volumetric Ranking Summary Report--100% Premium"		

AR000180

APPENDIX C Map of the Site

APPENDIX D "De Minimis Settlement Summary"

AR000181

I. BACKGROUND

A. The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed an amended complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding the cleanup of the Berks Landfill Superfund Site in Spring Township, Berks County, Pennsylvania ("Site"), and recovery of costs incurred or to be incurred in responding to the release or threat of release of Hazardous Substances (as defined below) at or in connection with the Site.

B. As a result of the release or threatened release of Hazardous Substances, EPA and certain potentially responsible parties ("PRPs") have undertaken response actions at or in connection with the Site and will undertake response actions in the future. In performing, at a minimum, the response actions identified in Paragraphs C-I, below, EPA and these PRPs have incurred Response Costs (as defined below) at or in connection with the Site.

C. EPA conducted a Site Inspection of the Site on September 25, 1986.

D. EPA proposed the Site for inclusion on the CERCLA National Priorities List ("NPL") on June 24, 1988 (52 Fed. Reg. 23988) and then added the Site to the NPL on October 2, 1989 (54 Fed. Reg. 41020).

E. On August 7, 1990, EPA issued a Unilateral Administrative Order for Removal Action (Docket No. III-90-39-DC) to certain PRPs ("Order Respondents") at the Site. Pursuant to this Order, the Order Respondents built an 8-foot-high chain-link security fence around a portion of the Site; repaired approximately 1.5 acres of the existing landfill cap on the eastern

landfill which was damaged by erosion; and installed, operated, and continue to maintain the system that collects leachate from lagoons at the Site and pumps it to the Spring Township sewer system.

F. On July 5, 1991, Sonoco Fibre Drum, Inc., Carpenter Technology Corporation, and The Glidden Company ("RI/FS Respondents") and EPA entered into an Administrative Order on Consent (Docket No. III-90-32-DC) to conduct a Remedial Investigation/Feasibility Study ("RI/FS") at the Site. Pursuant to this Administrative Order on Consent, the RI/FS Respondents performed studies to identify the nature and extent of contamination at the Site and to evaluate alternatives to address that contamination. The RI/FS Respondents also agreed to reimburse EPA for EPA's costs to oversee preparation of the RI/FS.

G. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of a Proposed Remedial Action Plan ("Proposed Plan") for the Site on April 25, 1997 and provided the opportunity for public comment on the proposed Remedial Action ("RA") for the Site. The public comment period on the Proposed Plan ended on May 26, 1997.

H. On July 22, 1997, EPA issued a final Record of Decision ("ROD") for the Site. The ROD describes the Remedial Action which EPA selected for the Site. The Remedial Action selected in the ROD consists of repairing and maintaining the cap and forest covers over the contamination at the Site; monitoring of the groundwater and air to ensure that the contamination is not migrating; implementing institutional controls, including title restrictions, restrictive covenants, and use restrictions to prevent future consumption of On-Site ground water, restrict future development at the Site and limit future earth-moving activities at the Site; and maintaining and operating the leachate collection system. Notice of the final ROD was

published in the Reading Eagle, in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), on July 31, 1997.

I. On March 31, 1998, EPA issued a Unilateral Administrative Order ("UAO") under Section 106 of CERCLA, 42 U.S.C. § 9606 ("UAO") (Docket No. III-98-071-DC) to eighteen respondents to conduct the remedial design and Remedial Action selected in the ROD. Implementation of the UAO is currently underway.

J. On June 27, 1994, five PRPs brought a civil action against eighteen other PRPs under Section 107 of CERCLA, 42 U.S.C. § 9607, (Civil Action No. 94-CV-3970) for contribution towards recovery of Response Costs incurred and to be incurred by the PRPs at the Site. That complaint has been amended six times during which nine original defendants who are complying respondents to the March 31, 1998 UAO have realigned as plaintiffs and during which numerous other new defendants have been added. All of the Settling Defendants in this settlement remain defendants in that civil action.

K. The Regional Administrator of EPA, Region III, or his delegate, has determined that (1) prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of 42 U.S.C. § 9622(g)(1); (2) the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the Response Costs at the Site within the meaning of 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total Response Costs incurred and to be incurred at or in connection with the Site by the United States and by any other person is approximately \$12,657,884; and (3) the amount of Hazardous Substances contributed to the Site by each Settling Defendant and the toxic or other hazardous effects of the Hazardous Substances contributed to the Site by each Settling Defendant are

minimal in comparison to other Hazardous Substances at the Site within the meaning of 42 U.S.C. § 9622(g)(1)(A). Specifically, the amount of waste containing Hazardous Substances contributed to the Site by each Settling Defendant does not exceed 1% of the total waste containing Hazardous Substances sent to the Site that have been quantified or estimated to date, and the Hazardous Substances contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other Hazardous Substances at the Site. The volume of waste contributed to the Site by each Settling Defendant are set forth in Appendix A and Appendix B hereto.

L. EPA has informed the Settling Defendants and the Settling Defendants acknowledge that:

1. EPA has not yet completed its evaluation of Site volumetric information, and the terms of the proposed settlement, including the total site volume and the *de minimis* eligibility percentage (less than 1% of waste containing Hazardous Substances contributed to the Site), reflect only preliminary estimates;
2. EPA has made *de minimis* settlement offers to the Settling Defendants based on this preliminary analysis in order to provide interested parties the opportunity to reduce litigation and transaction costs by resolving their potential liability at an earlier stage in the proceeding;
3. EPA is continuing its evaluation of waste-in information for the Site and may make additional *de minimis* settlement offers in the future using that additional information. EPA's ongoing evaluation likely will result in an increase in EPA's estimate of the total volume of waste sent to the Site and may also result in reevaluation of *de minimis* eligibility for future *de*

minimis settlement offers.

M. The Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the amended complaint.

N. The Parties agree and this Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

II. GENERAL PROVISIONS

1. **Jurisdiction.** This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. **Retention of Jurisdiction.** This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

3. **Integration.** This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations,

agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

4. Appendices. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the "Berks Landfill Volumetric Ranking Summary Report--25% Premium."

"Appendix B" is the "Berks Landfill Volumetric Ranking Summary Report--100% Premium."

"Appendix C" is the Map of the Site.

"Appendix D" is the "De Minimis Settlement Summary."

5. Public Comment. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

6. Effective Date. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 5 immediately above.

7. Signatories. Each undersigned representative of a Settling Defendant to this

Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice (or his/her delegatee) certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

8. Agreement to Entry of Decree. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

9. Agent for Service of Process. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

10. Extension of Time to Answer the Amended Complaint. Contemporaneous with the filing of the amended complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the amended complaint in favor of each Settling Defendant, which extension shall run until thirty (30) days after the United States withdraws or withholds its consent pursuant to Paragraph 5 (Public Comment) or the Court declines to enter this Consent Decree.

11. Parties Bound. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or

corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

12. Objectives of the Parties. By entering into this Consent Decree, the mutual objectives of the Parties are to:

a. reach a final settlement among the Parties with respect to the Site pursuant to 42 U.S.C. § 9622(g), that allows each Settling Defendant to make a cash payment, including a premium, to resolve its alleged civil liability under 42 U.S.C. §§ 9606 and 9607 for injunctive relief with regard to the Site and for Response Costs incurred or to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of parties from further involvement at the Site; and

c. obtain settlement with Settling Defendants for their volumetric share of Response Costs incurred or to be incurred at or in connection with the Site by the United States or by any other person, to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

13. Definitions. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period of time shall run until the close of business of the next working day.

d. "De Minimis Settlement Summary" shall mean the list of each Settling Defendant, its election of a 25% or 100% premium, and the amount of its payment under this Consent Decree.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Hazardous Substance" shall have the meaning as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

h. "Matters Addressed in this Consent Decree" shall mean all response actions taken or to be taken by the United States or by any other person at or in connection with the Site and all Response Costs incurred or to be incurred by the United States or by any other person at or in connection with the Site. Matters Addressed in this Consent Decree do not include claims reserved by the United States pursuant to Paragraphs 18, below, and the United

States' reopener pursuant to Paragraph 19, below.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendants.

k. "Pollutant or Contaminant" shall have the meaning as that term is defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Conservation Act).

m. "Response Costs" shall mean all cost of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred or to be incurred by the United States or by any other person at or in connection with the Site.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendants" shall mean those individuals, corporations or other entities listed in Appendix D.

p. "Site" shall mean the Berks Landfill Superfund Site which is located in Spring Township, Berks County, Pennsylvania, and which is approximately 2.3 miles southwest of the Borough of Sinking Spring and approximately 7 miles southwest of the City of Reading. The Site consists of two closed municipal refuse landfills and associated features located south of Wheatfield Road, the areal extent of contamination which includes the groundwater plume and property necessary to implement the ROD. The Site is depicted more particularly on the map attached hereto as Appendix C.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

r. "Berks Landfill Volumetric Ranking Summary Report--25% Premium" shall mean the list, attached to this Consent Decree as Appendix A, that contains the settlement payments for eligible *de minimis* settlers electing to pay a 25% premium applied to future response costs and to remain subject to a cost reopener if total future response costs to implement the July 22, 1997 ROD exceed \$9,700,000.

s. "Berks Landfill Volumetric Ranking Summary Report--100% Premium" shall mean the list, attached to this Consent Decree as Appendix B, that contains the settlement payments for eligible *de minimis* settlers electing to pay a 100% premium applied to future response costs and not to remain subject to a cost reopener.

III. REIMBURSEMENT OF RESPONSE COSTS

14. Payment by Each Settling Defendant.

a. Within thirty (30) days of entry of this Consent Decree, each Settling Defendant shall pay the amount set forth in Appendix D (De Minimis Settlement Summary) to this Consent Decree. Any amount of the total payment exceeding \$1,155,884 shall be deposited in the Berks Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance EPA-authorized or -funded response actions at or in connection with the Site, or to reimburse the United States for Response Costs incurred and paid at or in connection with the Site by the EPA Hazardous Substance Superfund. Any balance remaining in the Berks Landfill Superfund Site Special Account after completion of

response actions or reimbursement of all costs of financing or performing all response actions at the Site shall be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Each Settling Defendant's payment under this Paragraph 14 (Payment by Each Settling Defendant) shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank and shall reference that Settling Defendant, the U.S. Attorney's Office file number 199Z01115, the EPA Region and Site/Spill # 03-S6 and DOJ Case Number 90-11-2-1347. Payment shall be made in accordance with instructions provided by the United States to each Settling Defendant upon execution of the Consent Decree. The EFT payment must be received at the DOJ lockbox bank by 11:00 A.M. (Eastern Time) to be credited on that day. When sending the EFTs referred to in this Paragraph 14 (Payment by Each Settling Defendant), each Settling Defendant shall also send a copy of its EFT notice to the following:

Docket Clerk (3RCOO)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

and

Carlyn Winter Prisk (3HS11)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

and

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Re: 90-11-2-1347.

15. Nature of Payment. Each Settling Defendant's payment constitutes its share of

payment for: (1) past response costs incurred by the United States or any other person at or in connection with the Site; (2) projected future response costs to be incurred by the United States or any other person at or in connection with the Site; and (3) that Settling Defendant's election of a 25% or 100% premium on the projected future response costs to cover the risks and uncertainties associated with this settlement including, but not limited to, the risk that the total Response Costs to be incurred at or in connection with the Site by the United States, or by any other person, will exceed the estimated total Response Costs upon which Settling Defendants' payments are based.

16. Failure to Make Payment. If any Settling Defendant fails to make full payment within the time required by Paragraph 14, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraph 14, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

IV. COVENANT NOT TO SUE BY UNITED STATES

17. Covenant of the United States. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 18 (Reservation of Rights by United States) and Paragraph 19 (Reopener), the United States covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or

9607, relating to the Site. This covenant not to sue shall take effect for each Settling Defendant, individually, upon receipt of that Settling Defendant's payment as required by Paragraph 14 (Payment by Each Settling Defendant) of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and b) the veracity and completeness of the information provided to EPA by that Settling Defendant relating to that Settling Defendant's involvement with the Site. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

18. Reservation of Rights by the United States. The covenant not to sue by the United States set forth in Paragraph 17 (Covenant of the United States) does not pertain to any matters other than those expressly specified in Paragraph 17 (Covenant of the United States). The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- d. liability arising from the storage, disposal or treatment of a Hazardous Substance, Pollutant or Contaminant at the Site after signature of this Consent Decree by Settling Defendants.

19. Reopener. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute

proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if

a. information is discovered which indicates that such Settling Defendant contributed Hazardous Substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a *de minimis* party at the Site because that Settling Defendant contributed greater than 1% of the waste containing Hazardous Substances at the Site, or contributed Hazardous Substances which are significantly more toxic or are of significantly greater hazardous effect than other Hazardous Substances at the Site; or

b. total future response costs to implement the July 22, 1997 ROD exceed \$9,700,000. The provisions of this subparagraph 19.b. shall not apply to those Settling Defendants identified in Appendix D who have elected to pay a 100% premium pursuant to Paragraph 15; or

c. information is discovered which indicates the Settling Defendant's certifications in Paragraph 23 are false or otherwise inaccurate.

V. COVENANTS AND CERTIFICATIONS BY SETTLING DEFENDANTS

20. Covenant to the United States. Each Settling Defendant, individually, covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not

limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through 42 U.S.C. §§ 9606(b) (2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at the Site; and
- c. any claim against the United States pursuant to 42 U.S.C. §§ 9607 and 9613, relating to the Site.

21. No Pre-Authorization of Claim. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22. Covenant as to Other Settling Defendants or Other Persons.

a. For Matters Addressed in this Consent Decree, Settling Defendants agree to release and waive all claims or causes of action, and not to assert any new causes of action, under CERCLA §§ 106, 107 and 113, 42 U.S.C. §§ 9606, 9607, and 9613, and RCRA § 7003, 42 U.S.C. § 6973, or claims for similar relief, that they may have, including for contribution, against any person or party.

b. Upon entry of this Consent Decree, Settling Defendants agree that they: (1) shall not challenge, contest, or submit comments upon any other consent decrees entered into by the United States and any other persons to the extent such settlements pertain to the Matters Addressed in this Consent Decree; (2) shall withdraw with prejudice any objections to any other Consent Decrees described above pending before the Court at the time they sign this Consent Decree.

23. Certification by Each Settling Defendant. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief and under the possible imposition of significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a Hazardous Substance, Pollutant or Contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

VI. EFFECT OF SETTLEMENT

24. Reservations as to Non-Parties. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as set forth in Paragraph 22 above, the United States and the Settling Defendants each reserve any and all rights, defenses, claims, demands, and causes of action

which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site or otherwise against any person not a Party hereto.

25. Waiver of Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph 25 affects the enforceability of the covenant not to sue included in Paragraph 17.

26. Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for the Matters Addressed in this Consent Decree.

SO ORDERED THIS 16th DAY OF AUGUST, 2000.



United States District Judge
F. S. VanANTWERPEN, U.S. DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Fleetwood Industries, Inc., et al., relating to the Berks Landfill Superfund Site:

FOR THE UNITED STATES OF AMERICA:

Date:

5/17/00


LOIS J. SCHIFFER

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date:

6/19/00


A. KENT MAYO

Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

MICHAEL R. STILES
United States Attorney
Eastern District of Pennsylvania

Date:

January 11, 2002


KAREN L. TOMLINSON

Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

June 14, 2000
Date

Bradley M. Campbell
BRADLEY M. CAMPBELL
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

6/1/00
Date

William C. Early
WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

Date


Susan T. Hodges
SUSAN T. HODGES
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

5/24/00
Date

Michael A. Hendershot
MICHAEL A. HENDERSHOT
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

FOR DEFENDANT HUB FABRICATING COMPANY:

4/13/00
Date


(Names and address of Defendant's signatories)

Thomas W. Martell, President
Hub Fabricating Company
100 Gibraltar Road
Reading, PA 19606

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Karen H. Cook, Esquire, Golden Masano Bradley
Title: Attorney for Hub Fabricating Company
Address: 1100 Berkshire Boulevard, Suite 201, Wyomissing, PA 19610

Defendant's Premium Election: 100%
(Either 25% or 100%)

FOR DEFENDANT KACHEL MOTORS, INC.:

4/13/00
Date

Kachel Motors Inc
Lee G. Kachel, Inc
(Names and address of Defendant's signatories)

P.O. Box 5
Shillington, Pa 19580

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Lee G. Kachel, President, Kachel Motors, Inc.
Title:
Address: 2400 Lancaster Pike, P.O. Box 5
Shillington, PA 19607

Defendant's Premium Election: 100%
(Either 25% or 100%)

BERKS LANDFILL - SECOND DE MINIMIS SETTLEMENT (CUMULATIVE) VOLUMETRIC RANKING SUMMARY REPORT

PRP Name

25 Percent Premium

APPENDIX A

- Hayes Construction/Clements
- Compton & Koenig/Clements
- Clifford Hill Sanitation/Adidas AMERICA, Inc.*
- Cocooning Industries/Clements/Pingstone **
- Burchard/Kitchener/Dick Thomas
- Lukens Construction Company, Inc./Clements
- Karchel Motors/Clements/F. Pingstone
- Hubb/Clements/Genermer

Previously accounted for waste ***

TOTAL

Future Cost:
EPA Past Costs:
PRPs Past Costs:
Premium:

1,955,597.10	100.00%	\$6,850,000.00	\$1,155,884.00	\$4,652,000.00	\$12,657,884.00	\$1,712,500.00	\$344,350.29
\$6,850,000							
\$1,155,884							
\$4,652,000							
25%							

Total Volume: 1,955,597.10 Cubic Yards

Base Payment - The percentage of total waste for each PRP multiplied by the sum of the Future Costs, EPA Past Costs, and PRPs Past Costs.
Premium Payment - The percentage of total waste for each PRP multiplied by the Future Costs minus the Premium rate (25%).
Total Payment - The sum of Base Payment and Premium Payment.

* Clifford Hill Sanitation's Volume includes its semi-trailer transporter waste (6,472.00 cy) and the waste it took to the Site for Generator Adas AMERICA, Inc. (2,291.00 cy). Its total volume (9,040.00) was subtracted from the previously accounted for waste in order to avoid double counting, and added to the new TOTAL volume amount.

** Cocooning's waste decreased slightly based on the receipt and review of additional information. Its previous total volume (12,698.03 cy) was subtracted from the previously accounted for waste amount in order to avoid double counting. Cocooning's new balance (5,745.27 cy) was added to the new TOTAL volume amount.

*** The "previously accounted for waste" reflects the waste included by EPA in the Volumetric Ranking Summary Reports that formed the basis for the first de minimis settlement (adjusted for Cocooning and Clifford Hill as described above).

AR000204

BERKS LANDFILL - SECOND DE MINIMIS SETTLEMENT (CUMULATIVE) VOLUMETRIC RANKING SUMMARY REPORT

PRF Name	100 Percent Premium						
	Total Volume	% of Total	Future Cost	EPA Past Cost	PRF Past Cost	Base Payment	Premium Payment
1 Hayes Construction/Clements	15,126.06	0.77%	\$52,983.06	\$8,940.48	\$35,982.69	\$97,905.60	\$52,983.06
2 Corruption & Koorfield/Clements	9,829.00	0.50%	\$34,428.69	\$5,809.57	\$23,381.35	\$63,619.62	\$34,428.69
3 Clifford Hill Sanitation/Adams AMERICA, Inc.*	9,040.00	0.46%	\$31,665.01	\$5,343.22	\$21,504.47	\$58,512.70	\$31,665.01
4 Caccosing Industries/Clements/Fingstone**	5,475.27	0.28%	\$19,178.59	\$3,236.24	\$13,024.64	\$35,439.47	\$19,178.59
5 Birchcraft Kitchens, Inc./Dick Thomas	3,497.81	0.18%	\$12,352.01	\$2,067.43	\$4,320.64	\$22,643.08	\$12,352.01
6 Lakes Construction, Inc./Clements	3,112.96	0.16%	\$10,903.97	\$1,839.96	\$7,403.15	\$20,149.08	\$10,903.97
7 Nashed Motors/Clements/Fingstone	614.02	0.03%	\$2,150.77	\$362.93	\$1,460.64	\$3,974.33	\$2,150.77
8 Huber/Clements/Clements	165.87	0.01%	\$581.00	\$98.04	\$394.57	\$1,073.62	\$581.00
Previously accounted for waste ***	1,906,736.11	97.60%					
TOTAL	1,955,597.10	100.00%	\$6,850,000.00	\$1,155,804.00	\$4,657,200.00	\$12,657,284.00	\$6,850,000.00
Future Cost:	\$6,850,000						
EPA Past Costs:	\$1,155,804						
PRF Past Costs:	\$4,652,000						
Premium:	100%						
Total Volume:	1,955,597.10						

Base Payment = The percentage of total waste for each PRF multiplied by the sum of the Future Costs, EPA Past Costs, and PRF Past Costs.
 Premium Payment = The percentage of total waste for each PRF multiplied by the Future Costs minus the Premium (100%)
 Total Payment = The sum of Base Payment and Premium Payment.

* Clifford Hill Sanitation's Volume includes its unattributed transporter waste (6,472.00 cy) and the waste it took to the Site for Generator Adams AMERICA, Inc. (2,298.00 cy). Its total volume (9,040.00 cy) was subtracted from the previously accounted for waste in order to avoid double counting, and added to the new TOTAL volume amount.

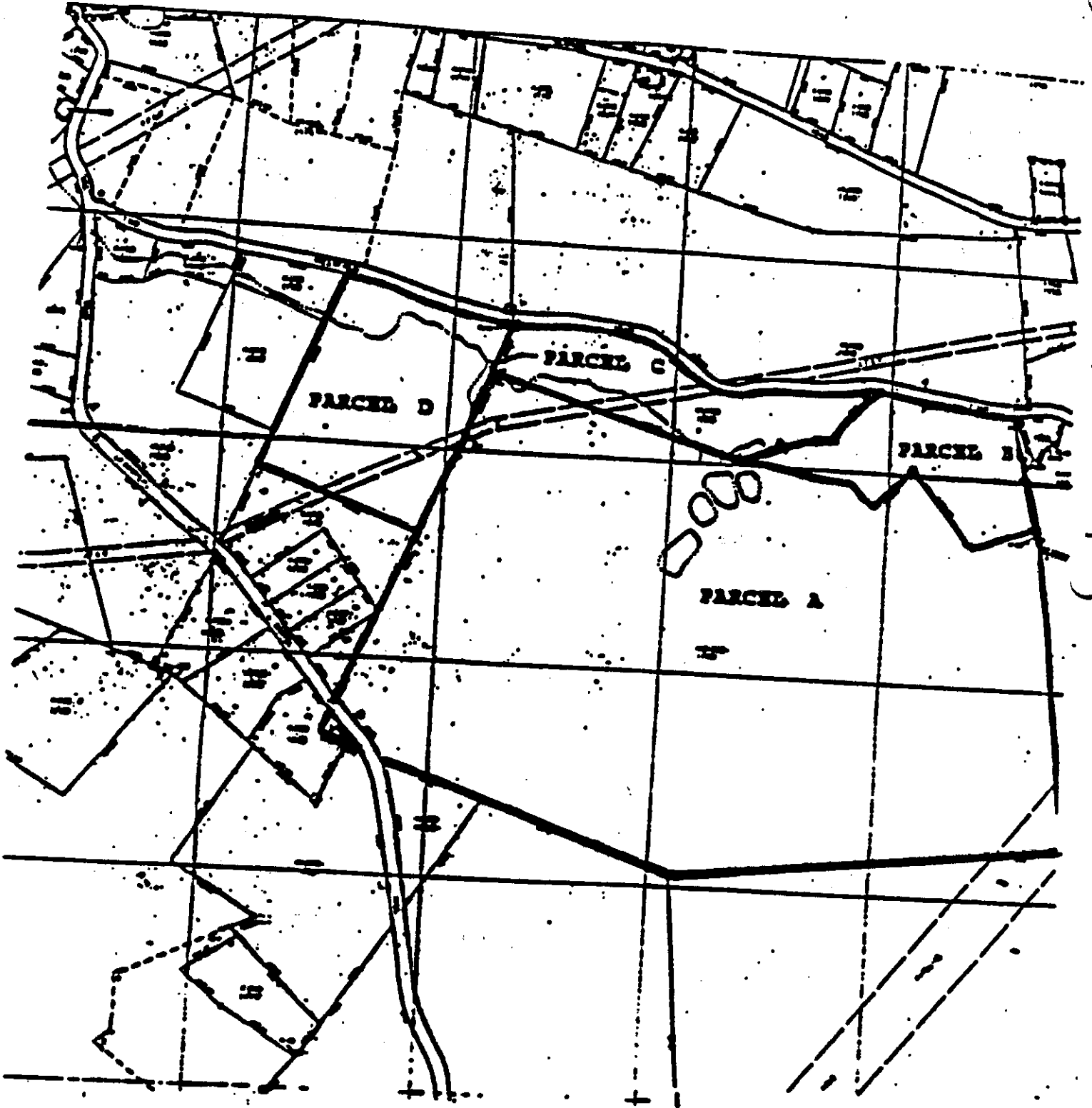
** Caccosing's Volume decreased slightly based on the receipt and review of additional information. Its previous total volume (12,498.03 cy) was subtracted from the previously accounted for waste amount in order to avoid double counting. Caccosing's new balance (5,745.27 cy) was added to the new TOTAL volume amount.

*** The previously accounted for waste reflects the waste included by EPA in the Volumetric Ranking Summary Reports that formed the basis for the first de minimis settlement (adjusted for Caccosing and Clifford Hill as described above).

AR000205

APPENDIX C

MAP OF THE SITE



AR000206

APPENDIX D

DE MINIMIS SETTLEMENT SUMMARY

<u>SETTLING DEFENDANT</u>	<u>PREMIUM ELECTION</u> (Either 25% or 100%)	<u>PAYMENT AMOUNT</u>
Hub Fabricating Company	100%	\$1,650.57
Kachel Motors, Inc.	100%	\$6,110.10

AR000207